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Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

In The

October Term, 1996

Charles E. Saunders

Petitioner

v.

United States of America

And

William J. Clinton, President and Chief Executive Officer

Respondents

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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5 DPP

Questions Presented For Review

1. Is there a provision anywhere in the Constitution of the United States which empowers an Article III court to promulgate and confer sovereign immunity upon the Government of the United States and/or absolute immunity upon any government official except Article I, section 6, of the original constitution which applies solely to members of the Congress?

2. Are the doctrines of sovereign immunity and/or absolute immunity constitutionally null and void unless the First Amendment is amended otherwise in accord with Article V of the original constitution?

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List of Parties To This Proceeding

Pursuant to Rule 14.1(b) of the Rules of the Supreme Court of the United States, the petitioner files this certificate as to parties and others who may have an interest in the outcome of this case:

Parties

Petitioner is Charles E. Saunders, plaintiff in the District Court and the appellant on appeal. Respondents, defendants in the District Court and appellees on appeal, are the United States of America and William J. Clinton, President and Chief Executive Officer.

The Honorable Janet Reno, Attorney General of the United States; The Honorable Walter Dellinger, acting Solicitor General of the United States; Eric H. Holder, Jr., Esq., United States Attorney for the District of Columbia; and Bruce R. Hegyi, Esq., Assistant United States Attorney, attorney of record for the respondents may also have an interest in the outcome of this case.

Opinions Below

On May 3, 1996, the District Court "ORDERED, [A-1] that defendants' motion to Dismiss, or Alternatively, For Summary Judgment be, and hereby is, GRANTED and plaintiff's Complaint is hereby DISMISSED WITH PREJUDICE; and it is FURTHER

ORDERED that plaintiff ENJOINED from filing any other or further actions in this District without having sought and obtained special leave of this Court to file such other or further action, without prior special leave of this Court having been granted." In another ORDER [A-2] of the same date, the District Court "Upon consideration of plaintiff's Motion for Summary Judgment, defendants' Opposition thereto, and the papers on file herein, the Court is of the opinion and finds that the Motion is not well-taken, and should be denied. It is therefore, this 3d day of May, 1996, ORDERED that plaintiff's Motion for Summary Judgment be, and hereby is, in all things, DENIED." In an order [A-3] issued May 15, 1996, the District Court "ORDERED that Plaintiff's Motion for Rule 11 Sanctions be, and hereby is, in all things DENIED."

In an order [A-4] issued on March 4, 1997, the United States Court of Appeals for the District of Columbia (per curiam) affirmed the orders of the District Court.

Statutory Provisions

The jurisdiction of the Supreme Court of the United States is conferred by 28 U.S.C. ¶1257(a). "Final judgments or decrees rendered by the [District of Columbia Court of Appeals] ... may be reviewed by the Supreme Court by writ of certiorari ... where any title, right,

privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of ... the United States."

Constitutional Provisions

Article V of the Constitution of the United States reads as follows:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, a Part of this Constitution, when ratified by the Legislature of three fourths thereof, as the one other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article, and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Amendment I to the Constitution of the United States reads as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Statement of the Case

This case evolves from a massive racially motivated conspiracy

involving officers, agents, and/or employees of various and sundry departments and agencies of the United States Government. This conspiracy was originally initiated as result of the petitioner's "whistle-blowing" activities concerning racial discrimination in the United States Air Force prior to the petitioner's retirement from active duty in July of 1975.

For the past twenty-six years the petitioner has lived an incredible but well-documented saga of a continuous and uninterrupted racially motivated political persecution by certain known and other unknown officers, agents and/or employees of the Department of the Air Force, Small Business Administration, General Services Administration, Internal Revenue Service, United States Postal Service, Department of Labor, and on more than one occasion even by the federal judiciary.

This action is brought by the petitioner seeking redress for the United States Government's unconstitutional withholding and denial of the petitioner's rights and privileges of American citizenship conferred upon the petitioner pursuant to the Fourteenth Amendment to the Constitution of the United States. The United States Government violated rights and privileges irrevocably conferred upon the petitioner pursuant to the First, Fifth and Eighth Amendments to the Constitution

of the United States as well as the statutory rights inured to the petitioner pursuant to 42 U.S.C. ¶¶1983, 1985, and 1986 in a civil rights lawsuit brought against former President George H. W. Bush and certain officials in the United States Department of Labor.

The petitioner charges in this action that President William J. Clinton and the current justices of the Supreme Court of the United States, individually and collectively, directly contributed to the continuous and uninterrupted constitutional injuries being suffered by the petitioner.

Jurisdiction in Court of First Instance

The United States District Court for the District of Columbia had jurisdiction pursuant to 28 U.S.C. ¶¶1331 and 1343 to adjudicate all relevant facts and issues of this action.

Reasons For Granting Writ

The petitioner, Charles E. Saunders, petitions the Supreme Court of the United States, pursuant to 28 U.S.C. ¶1257(a) to review the final order of the United States Court of Appeals for the District of Columbia Circuit prior to its issuance of mandate herein..

The petitioner has no other adequate means to obtain the relief

he seeks absent an adjudication of the constitutional validity of the judicially created doctrines of sovereign immunity and/or absolute immunity which are so routinely conferred upon the Government of the United States and federal government officials by Article III courts.

The district court's order is clearly erroneous as a matter of law and it was intentionally designed to subject an non-lawyer pro se litigant to a nonsensical foot dragging appellate review which compounds injustice with further injustice. This is an issue of material fact which illustrate the corrupt exercise of federal judicial power by the District Court judge to obstruct the petitioner's substantive constitutional claims for judicial relief, as well as the United States Court of Appeals for the District of Columbia Circuit's constitutionally egregious summary affirmance of that decision. The summary affirmance of the District Court's summary judgment is inconsistent with the ruling of the United States Court of Appeals for the Eighth Circuit in the case of **Paula Corblin Jones v. William Jefferson Clinton**, 72 F.3d 1354 (8th Cir. 1996)[1].

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[1] What is even more disgusting, the United States Court of Appeals for the District of Columbia Circuit's summary affirmance of the District Court's unjust judgment, it is inconsistent with its own stare decisis rulings. Cf. **Tao v. Freeh**, 27 F.3d 635, 638 (D.C. Cir. 1994); **Alaska Pipeline Serv. Co. v. United States Envtl. Protection Agency**, 956 F.3d 309, 314 (D.C. Cir. 1988).

In that case, as in this case, President Clinton asserted a claim of immunity from civil suit and filed a motion to dismiss on immunity grounds. The District Court for the Eastern District of Arkansas rejected the President's application for immunity. The Eighth Circuit Court of Appeals upheld the decision that the president was not entitled to immunity and it was expressly noted in an concurring opinion of one Judge that the, "President of the United States, like all other government officials, is subject to same laws that apply to all other members of our society." Id. at 1358.

In light of the important but still unresolved constitutional question inherent in this matter, one does not have to be a rocket scientist or even a lawyer to realize that the Petitioner has been disenfranchised of the rights and privileges of American citizenship accorded to Paula Corbin Jones.

In spite of the fact, that after over 240 years of slavery and nearly ninety years of institutionalized racial segregation, institutionalized racial discrimination has managed to survive the passage of time long after slavery had been abolished. And even after

the more oppressive forms of institutionalized racial segregation have been eliminated, institutionalized racism continues to plague the domestic as well as the international tranquillity of this nation. Simply because this Court refuses to consider a serious and meaningful dismantling of the apparatus of institutionalized racial discrimination in discernible and lasting ways to purge institutionalized racial discrimination from the American culture.

Mrs. Jones' civil rights lawsuit against President Clinton for conduct which allegedly occurred before he became President of the United States is distinctive of at least three other lawsuits against an occupant of the Oval Office. The "truism" enunciated by Judge Beam of the Eighth Circuit Court of Appeals is worthy of note and it is equally applicable to the Petitioner's civil rights lawsuit. "... Article II of the Constitution, which vests the executive power of the federal government in the President, did not create a monarchy. The President is cloaked with none of the attributes of sovereign immunity. To the contrary, the President, like all other government officials, is subject to the same laws that apply to all other members of our society." 72 F.3d at 1358.

The Eighth Circuit rejected the suggestion that Mrs. Jones' lawsuit was politically motivated and it should be examined and

dismissed if her objective in filing the lawsuit "is less than pure." The Court held that Mrs. Jones is constitutionally entitled to access to the courts and to the equal protection of the laws. Citing and quoting Mr. Chief Justice John Marshall in **Marbury v. Madison**, 5 U.S. (1 Cranch) 137, 163, 2 L.Ed. 60 (1803), "The very essence of civil liberty certainly consists in the right of **every individual** to claim the protection of the laws, whenever he receives an injury." (Emphasis added).

Although it was not mentioned by Judge Beam, but the very next words after the aforesaid quote enunciates the chief principle and fundamental element of a democratic constitutional republic which is, "One of the first duties of government is to afford that protection." Id. at 163.

However, Mr. Chief Justice Marshall made a far more significant constitutional analysis in the majority opinion of this Court in **Marbury v. Madison** when he wrote, "...the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument." Id. at 180.

Mrs. Jones has been allowed access to the courts to argue her

civil rights claim against President Clinton, a sitting president, grounded upon "unofficial acts" alleged to have occurred before he became president. A distinguishable and a very significant difference between Petitioner's civil rights lawsuit and Mrs. Jones's civil rights lawsuit, other than the fact, the Petitioner asserts a private constitutional claim against the President which the Petitioner readily concedes, falls "within ambit of official presidential responsibility." Id. 72 F.3d at 1355, 1360. But it is a "highly significant fact" that Mrs. Jones is a white female, the Petitioner is a black male.

The federal courts below have avoided the necessity of ruling on the constitutional validity of the doctrines of sovereign and/or absolute immunity by permitting Mrs. Jones to proceed sub silento of those constitutional issues. But unlike Mrs. Jones in the Eighth Circuit, the Petitioner has been denied the same privilege in the District of Columbia Circuit.

The *obiter dictum* of Mr. Chief Justice Marshall in **Marbury v. Madison**, supra, while not controlling, it is never the less persuasive. In **Marbury** Mr. Chief Justice Marshall rhetorically surmised:

> [W]hat is there, in the exalted station of the officer, which shall bar a citizen from asserting, in a court of justice, his legal rights, or shall forbid a court to listen to

> the claim ... If one of the heads of departments commits any illegal act, under color of his office, by which an individual sustains an injury, it cannot be pretended, that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law. How then, can his office exempt him from this particular mode of deciding on the legality of his conduct, if the case be such as would, were any other individual the party complained of, authorize the process? Id. at 170.

There is no constitutional convergence of the issues in Mrs. Jones' well-publicized, but uncorroborated, sexual harassment lawsuit against President Clinton for conduct which allegedly occurred while he was governor of Arkansas, and the Petitioner's civil rights lawsuit asserting President Clinton's complicity in a massive racially motivated conspiracy.[2] A conspiracy which has been, and continues to be, sustained by an abusive exercise of federal power, sanctioned by Article III courts, to retaliate against the Petitioner for his continued dissident opposition of the institutionalized racial discrimination so routinely practiced by the United States Government itself.

This Court (the Supreme Court of the United States) has developed a series of rules under which Article III courts have avoided

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[2] The President of the United States of America can be sued in an Article III court for violations of 42 U.S.C. ¶¶ 1983, 1985 and 1986.

passing upon a large part of all constitutional questions pressed upon them for decision. For example, with reference to the rule forbidding decision of properly presented constitutional questions if the case may be disposed of on another ground; "Thus, if a case can be decided one either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter." **Rescue Army v. Municipal Court**, 331 U.S. 549, 569 (1946). When such alternatives are absent an Article III court cannot escape ruling on a properly presented constitutional question. An adjudication of both of these substantive issues are imperative to any fair and just final decision of the Petitioner's civil rights lawsuit.

The Petitioner, pursuant to 28 U.S.C. ¶1254(a), previously petitioned this Court for the certification of the two following federal questions:

1. Is there a provision anywhere in the Constitution of the United States which empowers an Article III court to promulgate and confer sovereign immunity upon the Government of the United States and/or absolute immunity upon any government official except Article I, section 6, of the original constitution which applies solely to members of the Congress?

2. Are the doctrines of sovereign immunity and/or absolute immunity constitutionally null and void unless the First Amendment is amended otherwise in accord with Article V of the original constitution?

This Court has declined to exercise its federal question certification authority pursuant to 28 U.S.C. ¶1254(a) by a writ of certiorari before judgment. However, these are issues of material fact which clearly illustrate the malicious and abusive exercise of federal judicial power by the District Court judge to obstruct the Petitioner's substantive constitutional claims for judicial relief.

The Petitioner fervently asserts that the Petition Clause of the First Amendment to the Constitution of the United States is beyond any reasonable doubt, a constitutional waiver of sovereign immunity! "If such be the constitution, it is the duty of the court to bow in respectful submission to its provisions. If such be not the constitution, it is equally the duty of the court to say so; and to perform that task which the American people have assigned the judicial department." **Cohens v. Virginia,** 19 U.S. (6 Wheaton) 264, *375 (1821).

The record established in the District Court also reveal the United States Court of Appeals for the District of Columbia's constitutionally egregious summary affirmance of that unjust final

decision which is undeniably inconsistent with the ruling of the United States Court of Appeals for the Eighth Circuit in the case of **Paula Corbin Jones v. William Jefferson Clinton,** supra..

In that case, as in this case, President Clinton asserted a claim of immunity from civil suit and filed a motion to dismiss. The District Court for the Eastern District of Arkansas rejected President Clinton's application for immunity. The Eighth Circuit Court of Appeals upheld the decision that the president was not entitled to immunity and it was specifically noted in the concurring opinion of one Judge that the "President of the United States, like all other government officials, is subject to same laws that apply to all other members of our society." Id. at 1358.

The unsettled and still unresolved constitutional questions concerning the judicially created doctrines of sovereign immunity and absolute immunity are squarely and properly before this Court in this non-lawyer pro se Petitioner's civil rights lawsuit. "It is true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. [This Court] cannot pass it by because it is doubtful.

With whatever doubts or whatever difficulties [this] case may be attended [this Court] must decide it if it is [properly] brought before [the Court]. [This Court] have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. One or the other would be treason to the Constitution." **Cohens v. Virginia**, 19 U.S. (6 Wheaton) 264, 404 (1821).

"[W]hen questions of jurisdiction have been passed on in prior decisions sub silento, this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before us." **Franklin v. Massachusetts**, 505 U.S. 788, 820, n.4(1992) citing **Pennhurst State School and Hospital v. Halderman**, 465 U.S. 89, 119(1984) (quoting) **Hagans v. Lavine**, 415 U.S. 528, 533, n.5(1974).

The constitutional questions of sovereign immunity and absolute immunity were drawn into issue as a jurisdictional bar to the litigation of the Petitioner's civil rights lawsuit against the United States of America and President William J. Clinton, in the Government (Defendants) Respondents' motion to dismiss, or alternatively, for summary judgment. The Petitioner filed a dispositive motion, opposing the Government (Defendants) Respondents' motion to dismiss, or alternatively, for summary judgment, which challenged the

constitutional validity of the judicially created doctrines of sovereign immunity and/or absolute immunity. In that dispositive motion the petitioner also challenged the constitutional power and authority of any Article III court, including the Supreme Court of the United States itself, to judicially promulgate the doctrines of sovereign immunity and/or absolute immunity in contravention of the Petition Clause of the First Amendment to the Constitution of the United States. The Petitioner also proffered evidence in the form of an affidavit (which fulfilled the Rule 11 requirements of an attorney or pro se litigant and Rule 56 requirements of an opponent to a summary judgment motion) based upon a personal knowledge of the facts stated therein. The Petitioner's affidavit was, as a matter of law, sufficient to withstand the Government (Defendants) Respondents motion for summary judgment.

The district court employed an incomprehensible standard more stringent than that required by Rule 56 of the Federal Rules of Civil Procedure to wrongfully grant summary judgment in favor of the Government (Defendants) Respondents. It is an absolutely preposterous judicial fiat beyond any conceivable comprehension of Rule 56 for the district court to grant summary judgment in favor of the Government (Defendants) Respondents. Rule 56 of the Fed. R. Civ. P. is subject to

the injunction of Rule 1, that it "be construed to secure the just, speedy, and inexpensive determination of every action." The district court's obstinate refusal to render a judicial determination of the threshold issue before it clearly illustrates the outrageous constitutionally repugnant abuse of federal judicial power by the District Court as well as the Circuit Court of Appeals. "If material facts are at issue, or, though undisputed, are susceptible to divergent inferences, summary judgment is not available." **Tao v. Freeh**, 27 F.3d 635, 638 (D.C. Cir. 1994); **Alaska Pipeline Serv. Co. v. United States Envtl. Protection Agency**, 856 F.2d 3309, 314 (D.C. Cir. 1988). "Summary judgment should be granted only where there are no genuine issues of material fact, and all inferences must be viewed in a light most favorable to [the Petitioner] the non-moving party." **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 250, 106 S.Ct. 2505, 2513-14, 91 L.Ed.2d 202)1986). A dispute over the existence or non-existence of a fact or inference is material, if it makes a difference in the final decision. An issue is also material if it must inevitably be decided. **Summary Judgment Under Federal Rules** 99 F.R.D. at 480.

"If material facts at issue, or, though undisputed, are susceptible to divergent inferences, summary judgment is not available." The

Petitioner's case in chief is grounded upon intellectually discernible historical facts and the inferences drawn therefrom.

Notice, intent, motive and other states of mind are common examples of historical facts established by inference. A dispute over such inference is an issue of fact even if the underlying evidence itself is not in dispute. Intellectually discernible historical facts are among that genre of facts to be decided by jury rather than Article III judges who have demonstrated a lack of respect for the Constitution which they have sworn to uphold. Id, at 480.

There has been a distinguishable pattern and consistent practice of judicial departure from stare decisis principles of federal jurisprudence and the Federal Rules of Civil Procedure in this case. The record established by the District Court clearly illustrates the continuous and long standing judicial conspiracy designed to punitively deprive the Petitioner of his constitutionally protected civil rights.

On August 4, 1994, the petitioner filed a joint petition addressed to William J. Clinton, President of the United States of America; The Honorable William Rehnguist, Chief Justice of the United States; The Honorable Thomas Foley, Speaker of the United States House of Representatives; and Senator George Mitchell, Majority Leader of the

United States Senate.

The petition sought a congressional hearing of the judicial corruption associated with the Petitioner's civil rights lawsuit against former President Bush and officials of the United States Department of Labor as well as the self-imposed or externally influenced censorship of the American news media, both print and electronic. No reply was ever received from any of the addressees and it forms the basis of the petitioner's current civil rights lawsuit, **Saunders v. United States of America and William J. Clinton, President and Chief Executive Officer**.

The Petition Clause of the First Amendment was promulgated by the constitutional framers to restrain acts of governmental tyranny upon citizens of the United States of America such as those complained of in the Petitioner's civil rights lawsuit. The courts created pursuant to and in accord with Article III of the Constitution of the United States of America, and the political propensity of the President(s) who appoints its members with the advise and consent of the Senate, have made a mockery of the Constitution of the United States of America causing wide spread distrust of the federal government.

The Petition Clause of the First Amendment is the constitutional

remedy of last resort between the ballot box and lawless anarchy. This Court has subtly redesigned the architecture of the Constitution by unconstitutionally assuming the role of "protector of the Government" instead of its constitutional role of "protector of the Constitution." Serving the "created" rather than the "creator."

Unless the amoral judicially created doctrines of sovereign and absolute immunity are abolished, no amount of legislative programming will alter the ever increasing patterns of crime and violence visited upon the people and property of this nation. The issue of sovereign and absolute immunity transcends any so-called special interest group to touch upon the very essence of moral democratic values guaranteed and supposedly protected by the "Bill of Rights."

The Petitioner, like most Americans, strongly believe in the principles and values to which the United States of America theoretically aspires. But in reality many racially discriminatory oppressions and injustices are actually rooted in these same principles and values. Article III courts have become instruments of government policy and they are by no means impartial. Where the laws are just and equal on their face, by a systematic maladministration of them, or a neglect or refusal to enforce their provisions as evinced by **Saunders v.**

Bush, et al, 15 F. 3d 64 (5th Cir.) cert. denied, U.S. 114 S.Ct. 2678 (1994) and the continuing pattern in this case. In contrast with **Jones v. Clinton** supra, the Petitioner continues to be consistently deprived of due process and equal protection of the Constitution and the laws of the United States.

The unrestrained tyranny of the federal government has aroused heated passions among an increasing number of patriotic American citizens. Because the judicially created doctrines of sovereign and absolute immunity has allowed the United States Government to run amok.

The Supreme Court of the United States itself bears a far greater responsibility than either the Congress or the Presidency for the racially polarized political, economic and social discord plaguing the national security interest of the United States at the close of the 20th century. Based upon the demonstrated past history of the judicial malfeasance associated with the legal proceedings in this case, it is without question that the District Court judge deliberately violated the Petitioner's constitutional, statutory and procedural rights by wrongfully denying the Petitioner's substantive right to a fair and impartial trial by jury. Since the Government (Defendants) Respondents failed to plead or otherwise

defend in the federal courts below, the only constitutionally permissible adjudication will completely devastate the Government (Defendants) Respondents' only defense. Therefore, the ultimate, and the only, issue involved in this case turns on the constitutional power or authority of the Supreme Court of the United States to promulgate and confer sovereign immunity and/or absolute immunity upon the United States Government or any federal government official.

These are very serious and important questions of federal law which has not been, but should be, settled by this Court, the Supreme Court of the United States. The District Court judge deliberately and maliciously obstructed justice with a spurious judicial fiat designed to punitively deprive the Petitioner of substantive due process of law as mandated by the equal protection component of the Due Process Clause of the Fifth Amendment to the Constitution of the United States of America. The extraordinary remedy provided by a writ of certiorari pursuant to 28 U.S.C. ¶1257(a) is the only means available for the Petitioner to have a fair and impartial litigation of his constitutional claims.

CONCLUSIONS

Article III courts, and especially the Supreme Court of the

United States, have created an extraordinary constitutional dilemma of its own making which threatens the constitutional patriotism of the American people. The race-driven judicial facades such as those complained of by the Petitioner in this case have beyond any reasonable doubt, fermented the deep-seated ideological reservoirs of institutionalized racial discrimination which in turn fuel and inspire the chaotic political, economic and social, racial polarization still plaguing the United States of America at the close of the 20th century.

For the reasons herein described, the Petitioner respectfully prays that the Supreme Court of the United States reverse the summary affirmance of the United States Court of Appeals for the District of Columbia Circuit and remand this case for consideration under appropriate standards of due process and equal protection of the laws.

Respectfully submitted in the service of God my Father, Christ my Redeemer and Man my Brother.[3] May God Bless America.

Charles E. Saunders

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[3] Blessed are they which are persecuted for righteousness sake: for theirs is the kingdom of heaven." Matt. 5:10 (KJV)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES E. SAUNDERS,	§	
Plaintiff,	§	
	§	
-vs-	§	
	§	C.A. No. 95-2357 (SSH)
UNITED STATES OF AMERICA	§	
-and-	§	
	§	
WILLIAM J. CLINTON, President	§	
Defendants.	§	
	§	

FILED
MAY 3 1996
Clerk, U.S. District Court
District of Columbia

ORDER

Upon consideration of defendant's Motion To Dismiss, or Alternatively, For Summary of Judgment, Memorandum In Support Thereof, exhibits record herein, the Court is of the opinion and finds that defendant's Motion is well-taken and should be granted. First, the Court must dismiss plaintiff's allegations against President Clinton, because the acts alleged are plainly within the "outer perimeter" of the duties of the chief executive of the Government. See, e.g. Nixon v. Fitzgerald, 457 U.S. 731, 755 (1982) (President enjoys absolute immunity for acts within the "outer perimeter" of his official responsibility); Saunders v. Bush, 15 F.3d 64, 67 (5th Cir.), cert. denied, _ U.S. _, 114 S.Ct. 2678 (1994) (same).

Second, plaintiff has previously litigated to a conclusion the same allegations brought by him here. [Compare Complaint, ¶¶ (7)-(17) with complaint, ¶¶ (18)-(21); Saunders v. Bush, 15 F.3d at 67] As a result, all of plaintiff's claims are barred by the related doctrines of res judicata and collateral estoppel. **See, e.g., Allen v., McCurry**, 449 U.S. 90, 94 (1980); **United States v. Mendoza**, 464 U.S. 154, 158 (1984); **Montana v. United States**, 440 U.S. 147, 153 (1979); **American Employers Insurance Company v. American Security Bank**, 747 F.2d 1493, 1498 (D.C. Cir. 1984); **Hardison v. Alexander**, 655 F.2d 1281, 1288 (D.C. Cir. 1981); **Nasem v. Brown**, 595 F.2d 801, 806 (D.C. Cir. 1979).

Moreover, even if plaintiff's allegations were not barred by res judicata and collateral estoppel, the Court could not consider his allegations for money damages under the False Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680, because plaintiff has failed to exhaust his administrative remedies and the Court is therefore without jurisdiction over such claims. **See** 28 U.S.C. §2675(a); **GAF Corp. v. United States**, 818, F.2d 901, 904 and n.86 (D.C. Cir. 1987); **Hohri v. United States**, 782 F.2d 227, 245-46 (D.C. Cir. 1986); reh. denied, 793 F.2d 304 (D.C. cir. 1987); rev'd on other grounds sub nom., **United States v. Hohri**, 107 S.Ct. 2246 (1987).

For all of these independent reasons, the Court is of the opinion and find that plaintiff's Complaint should be dismissed.

In addition, the Court finds that the allegations of plaintiff's Complaint are frivolous, and that plaintiff knew or should have known

that they were frivolous at the time he filed and maintained this action. In this regard, the Court finds that plaintiff Saunders, a Texas-resident, has repeatedly been adjudicated a frivolous litigator. In this District, Judge Lamberth dismissed in 1993, as being without merit, Mr. Saunders' claims against Attorney General Reno and others in Saunders v. Reno, 1993 WL 771009 (D.D.C. 1993), summ. aff'd., 1994 WL 541497 (D.C. cir. 1994). In so doing, Judge Lamberth identified Mr. Saunders as "a pro se plaintiff with a history of bringing frivolous lawsuits...." Id. at 1. moreover, by an Order dated October 5, 1992, of Judge Cummings of the Northern District of Texas in C.A. No. 1-92-CV-049-C, **Charles E. Saunders v. George H. W. Bush, President and Chief Executive Officer of the Government of the United States of America**, imposed Rule 11 sanctions against Mr. Saunders for having commenced and maintained multiple frivolous actions before that Court. In addition to monetary sanctions, based on plaintiff's history of vexatious litigation in that District, Judge Cummings enjoined plaintiff from being "permitted to file . . . any further complaints in this or any other matter in this court unless and until Plaintiff pays, in full, the fines, costs and fees hereby assessed or unless this court grants Plaintiff special leave to file." [**See October 5, 1992 Order**, pages 2-3] That order was affirmed by the Fifth Circuit. **See Saunders v. Bush**, 15 F.3d 64 (5th Cir.), cert. denied, ___ U.S. ___, 114 S.Ct. 2678 (1994).

Apparently unconvinced, on December 22, 1995, Mr. Saunders filed in this District the instant action against the United States and President Clinton alleging essentially the same facts previously determined by Courts in this Circuit and the Fifth Circuit to be frivolous.

Hence, the Court finds that the interests of judicial economy and justice, as well as principles of comity, require that this Court enjoin plaintiff from filing any other or further actions in this District without having sought and obtained prior special leave of this Court to file such other or further action. It is therefore, this 3rd day of May 1996

ORDERED, that defendants' Motion to Dismiss, or Alternatively, For Summary Judgment be, and hereby is, GRANTED and plaintiff's Complaint is hereby DISMISSED WITH PREJUDICE; and it is

FURTHER ORDERED that plaintiff is ENJOINED from filing any other or further actions in this District without having sought and obtained prior special leave of this Court to file such other or further action, and the Clerk is hereby Ordered not to accept for filing any other or further actions of or by plaintiff Saunders without prior special leave of this Court having been granted.

Moreover, the Clerk is directed to serve plaintiff Saunders with a copy of this Order by certified mail, return receipt requested

Stanley S. Harris
United States District Judge

Copies to:

Bruce R. Hegyi, Esq.
Assistant United States Attorney
555 Fourth Street, N.W.--Room 4108
Washington, D.C. 20001

Charles E. Saunders
5709 89th Street
Lubbock, Texas 79424

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES E. SAUNDERS,	§	
Plaintiff,	§	
	§	
-vs-	§	
	§	C.A. No.
	§	95-2357 (SSH)
UNITED STATES	§	
OF AMERICA,	§	
	§	
-and-	§	
	§	
WILLIAM J. CLINTON,	§	
President	§	
Defendants.	§	
	§	

FILED
MAY 3 1996
Clerk, U.S. District Court
District of Columbia

ORDER

Upon consideration of plaintiff's Motion for Summary Judgment, defendants' Opposition thereto, and the papers on file herein, the Court is of the opinion and finds that the Motion is not well-taken, and should be denied. It is, therefore, this 3d day of April, 1996

ORDERED that plaintiff's motion for summary judgment be, and hereby is, in all things, DENIED.

Stanley S. Harris
STANLEY S. HARRIS
United States District Judge

Copies to:

Bruce R. Hegyi, Esq.
Assistant United States Attorney
555 Fourth Street, N.W.--Room 10-832
Washington, D.C. 20001

Charles E. Saunders
5709 89th Street
Lubbock, Texas 79424

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES E. SAUNDERS,	§	
Plaintiff,	§	
	§	
-vs-	§	
	§	C.A. No.
	§	95-2357 (SSH)
UNITED STATES OF AMERICA,	§	
	§	
-and-	§	
	§	
WILLIAM J. CLINTON, President	§	
Defendants.	§	
	§	

FILED
MAY 15 1996
Clerk, U.S. District Court
District of Columbia

ORDER

Upon consideration of plaintiff's Motion For Rule 11 Sanction, defendants' Opposition thereto, and the entire record herein, the Court is of the opinion and finds that Plaintiff's Motion is without merit, and indeed is frivolous, and should be denied. It is, therefore, this 15th day of May, 1996

ORDERED that Plaintiff's Motion For Rule 11 Sanction be, and hereby is, in all things, DENIED.

Stanley S. Harris
STANLEY S. HARRIS
United States District Judge

Copies to:

Bruce R. Hegyi, Esq.
Assistant United States Attorney
555 Fourth Street, N.W.--Room 10-832
Washington, D.C. 20001

Charles E. Saunders
5709 89th Street
Lubbock, Texas 79424

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-5155 **September Term, 1996**

95cv02357

Charles E. Saunders, §
Appellant §
§
v. §
§
United States of America §
and §
William J. Clinton, §
President, §
Appellees §

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
MAR - 4 1997
CLERK

BEFORE: Ginsburg, Sentelle, and Henderson, Circuit Judges

ORDER

Upon consideration of the motion for summary reversal, the supplement thereto, the motion for summary affirmance, the combined opposition thereto, motion to strike, and motion for de novo review, and the reply, it is

ORDERED that the motion to strike be denied. It is

FURTHER ORDERED that the motions for summary reversal and for de novo review be denied, and that the motion for summary affirmance be granted substantially for the reasons stated in the district court's orders filed My 3 and May 15, 1996. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers

Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 5454 (D.C. Cir,) (per curiam), cert. denied, 449 U.S. 994 (1980). The district court properly dismissed appellant's complaint and enjoined him from filing further actions without leave of court.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

Per Curiam

APPENDIX

Prescribed by Supreme Court Rule 14(f)

Constitutional Provisions

Article I, Section 6 -- The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from same; and for any speech or debate in either House, they shall not be questioned in any other place.

Amendment V -- No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VIII -- Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV, Section 1 -- All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge any person of life, liberty, or

property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory Provisions

28 U.S.C. ¶1254 -- Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up foor decision of the entire matter in controversy.

28 U.S.C. ¶1257 -- (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ od certiorari where the validity of a treaty or statue of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is speecially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

28 U.S.C. ¶1331 -- The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. ¶1343 -- (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section --

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of

Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. ¶1983 -- Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person withing the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. ¶1985 -- Conspiracy to interfere with civil rights (Relevant and pertinent part)

(3) If two or more person in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of person of equal protection of the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United

States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprive of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. ¶1986 -- Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act or neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there is no widow, then for the benefit of the next kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Federal Rules of Civil Procedure

Rule 1. -- Scope of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 11. -- Signing of Pleadings, Motions, and Other Papers; Sanctions

Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sigh the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleading need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that if not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless

increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Rule 56. -- Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to al or any part thereof.

(c) Motion and proceeding Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleading, depositions, answers

to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party in entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required; Supporting or opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a

motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable. Should it appear from affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit fact essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or dispositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.